

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

RICHARD HARBUS,

Plaintiff,

- against -

HEARTLAND BREWERY, INC.

Defendant.

Docket No. 1:19-cv-5618

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Richard Harbus (“Harbus” or “Plaintiff”) by and through his undersigned counsel, as and for his Complaint against Defendant Heartland Brewery, Inc. (“Heartland” or “Defendant”) hereby alleges as follows:

NATURE OF THE ACTION

1. This is an action for copyright infringement under Section 501 of the Copyright Act. This action arises out of Defendant’s unauthorized reproduction and public display of a copyrighted photographs of beer, owned and registered by Harbus, a New York based professional photographer. Accordingly, Harbus seeks monetary relief under the Copyright Act of the United States, as amended, 17 U.S.C. § 101 *et seq.*

JURISDICTION AND VENUE

2. This claim arises under the Copyright Act, 17 U.S.C. § 101 *et seq.*, and this Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1338(a).

3. Upon information and belief, this Court has personal jurisdiction over Defendant because Defendant resides and/or transacts business in New York.

4. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b).

PARTIES

5. Harbus is a professional photographer in the business of licensing his Photographs to print and online media for a fee having a usual place of business at 119 Tappan Landing Road, Tarrytown, New York 10591.

6. Upon information and belief, Heartland is a domestic business corporation duly organized and existing under the laws of the State of New York, with a place of business at 1430 Broadway, Suite 1413, New York, New York 10018. Upon information and belief, Heartland is registered with the New York State Department of Corporations to do business in New York. At all times material hereto, Heartland has owned and operated a website at the URL: www.HeartlandBrewery.com (the "Website").

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photographs

7. Harbus photographed beer (the "Photographs"). A true and correct copy of the Photographs is attached hereto as Exhibit A.

8. Harbus is the author of the Photographs and has at all times been the sole owner of all right, title and interest in and to the Photographs, including the copyright thereto.

9. The Photographs were registered with United States Copyright Office and were given Copyright Registration Number VA 2-107-218.

B. Defendant's Infringing Activities

10. Heartland ran the Photograph on the Website. See <http://www.heartlandbrewery.com/the-response/>. A true and correct copy of the Photographs on the Website and a screenshot of the Photographs on the Website are attached hereto as Exhibit B.

11. Heartland did not license the Photographs from Plaintiff for its article, nor did Heartland have Plaintiff's permission or consent to publish the Photographs on its Website.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST DEFENDANT)
(17 U.S.C. §§ 106, 501)

12. Plaintiff incorporates by reference each and every allegation contained in Paragraphs 1-11 above.

13. Heartland infringed Plaintiff's copyright in the Photographs by reproducing and publicly displaying the Photographs on the Website. Heartland is not, and has never been, licensed or otherwise authorized to reproduce, publically display, distribute and/or use the Photographs.

14. The acts of Defendant complained of herein constitute infringement of Plaintiff's copyright and exclusive rights under copyright in violation of Sections 106 and 501 of the Copyright Act, 17 U.S.C. §§ 106 and 501.

15. Upon information and belief, the foregoing acts of infringement by Heartland have been willful, intentional, and purposeful, in disregard of and indifference to Plaintiff's rights.

16. As a direct and proximate cause of the infringement by the Defendant of Plaintiff's copyright and exclusive rights under copyright, Plaintiff is entitled to damages and Defendant's profits pursuant to 17 U.S.C. § 504(b) for the infringement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests judgment as follows:

1. That Defendant Heartland be adjudged to have infringed upon Plaintiff's copyrights in the Photographs in violation of 17 U.S.C §§ 106 and 501;

2. That Plaintiff be awarded Plaintiff's actual damages and Defendant's profits, gains or advantages of any kind attributable to Defendant's infringement of Plaintiff's Photographs;
3. That Defendant be required to account for all profits, income, receipts, or other benefits derived by Defendant as a result of its unlawful conduct;
4. That Plaintiff be awarded punitive damages for copyright infringement;
5. That Plaintiff be awarded attorney's fees and costs;
6. That Plaintiff be awarded pre-judgment interest; and
7. Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable in accordance with Federal Rule of Civil Procedure 38(b).

Dated: Valley Stream, New York
June 16, 2019

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